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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,195	03/15/2004	Ralf Kollef	COLT 20.654 (101042-00006)	6812
26304	7590	10/23/2006	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP				
575 MADISON AVENUE				
NEW YORK, NY 10022-2585				
			ART UNIT	PAPER NUMBER
			3732	
DATE MAILED: 10/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/686,195

Applicant(s)

KOLLEFRATH ET AL.

Examiner

Candice C. Stokes

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-23 is/are allowed.
- 6) ☒ Claim(s) 1-10, 14-20 is/are rejected.
- 7) ☒ Claim(s) 11-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/20/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1) Claims 1-3,5-7,14-15,17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feinmann et al (USPN 4,677,139). The first portion of claim 1 is considered to be admitted prior art. Feinmann et al teaches a method for dentistry wherein a curable silicone material is applied to a wound in a patient's mouth, possibly following an extraction. The silicone material or elastomeric foam "being curable at body temperature and being capable of undergoing a volume of expansion of at least about 150% upon curing" (column 8, lines 17-20). This also anticipates claims 2-3 and 14-15. As to claim 5, the mold of elastomeric foam is capable of being held in place by the opposing row of teeth as shown in Fig. 9. Regarding claims 17 and 18, the curable molding mass comprises at least one additional silicone compound and a curing catalyst. Specifically, Feinmann et al teach "the elastomeric foam composition is formed from a system of components which includes silicone fluids, siliceous fillers, crosslinkers, hydrogen, sources and a catalyst" (see abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a silicone material which is curable and expands when it cures in order to "minimize substantial risk of postoperative tissue loss with aesthetically unsatisfying results" (column 1, lines 42-43).

2) Claims 4,8-10,16,19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feinmann et al in view of Dragan (USPN 6,890,177). Regarding claims 4,8, and 16,

Art Unit: 3732

Feinmann et al teach the claimed invention in light of the admitted prior art except for at least one hemostatic agent being applied to the area between the tooth and gingival prior to the application of the silicone material. Dragan teaches a method and device for effecting the cordless retraction of the gingival sulcus wherein “to control any excessive gingival bleeding, an application of a liquid hemostatic agent 22, e.g. aluminum chloride, ferric sulfate or other suitable astringent is applied to the cut tissue in the area of the gingival sulcus” (column 3, lines 49-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the application of the hemostatic agent as taught by Dragan into the method with the silicone material as taught by Feinmann et al in order to provide a means for controlling the bleeding at the wound area prior to retracting the sulcus.

To claims 10 and 20, Feinmann et al in and Dragan substantially teach the claimed invention except for the hemostatic agent being a tannic acid. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide any hemostatic agent as Dragan teaches there are a variety that may be used to control excessive gingival bleeding, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

Claims 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 21-23 are allowed.

Response to Arguments

Applicant's arguments filed 08/02/06 have been fully considered but they are not persuasive. Applicant submits that "Feinmann does not teach the features of the preamble of claim 1". "Moreover, there is no motivation for one skilled in the art to combine the teachings of the preamble with the Feinmann reference" (see page 19, lines 2-3&4-6). The Office maintains that the rejection is proper. Specifically, the preamble of claim 1, is taken to admitted prior art, since it stated that "the improvement" is the silicone material is curable. The use in the same are of a silicone material which is curable is disclosed by the Feinmann reference, therefore the rejection is upheld. The motivation to combine is simply that the silicone material is used in retracting a sulcus for subsequent capping, therefore it would have been obvious that if the intended function is the retract the sulcus, certainly any material previously disclosed as being useful in such a process could obviously be used again. Therefore the rejection of claims 1-8 and 14-18 are upheld. Claims 9-10 and 19-20 stand newly rejected.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3732


CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candice C. Stokes whose telephone number is (571) 272-4714. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Candice C. Stokes


CRIS L. RODRIGUEZ
PRIMARY EXAMINER